

Post Conviction Remedies

Rule PC 1. Post-Conviction Relief

Section 1. Remedy--To whom available--Conditions.

- (a) Any person who has been convicted of, or sentenced for, a crime by a court of this state, and who claims:
 - (1) that the conviction or the sentence was in violation of the Constitution of the United States or the constitution or laws of this state;
 - (2) that the court was without jurisdiction to impose sentence;
 - (3) that the sentence exceeds the maximum authorized by law, or is otherwise erroneous;
 - (4) that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
 - (5) that his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint;
 - (6) that the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding, or remedy;may institute at any time a proceeding under this Rule to secure relief.
- (b) This remedy is not a substitute for a direct appeal from the conviction and/or the sentence and all available steps including those under Rule PC 2 should be taken to

perfect such an appeal. Except as otherwise provided in this Rule, it comprehends and takes the place of all other common law, statutory, or other remedies heretofore available for challenging the validity of the conviction or sentence and it shall be used exclusively in place of them. ~~This Rule supersedes present Supreme Court Rules 2-40, 2-40A, and 2-40B.~~

- (c) This Rule does not suspend the writ of habeas corpus, ~~but if~~ If a petitionerperson applies for a writ of habeas corpus, in the county where the person is incarcerated and challenges the validity of his conviction or sentence, court having jurisdiction of his person, attacking the validity of his conviction or sentence, that court shall ~~under this Rule~~ transfer the cause to the court in which to conviction took place, where the petitioner was convicted or sentenced, and the latter court shall treat it as a petition for relief under this Rule.
- (d) A petition filed by a person who has been convicted or sentenced for a crime by a court of this state that seeks to require forensic DNA testing or analysis of any evidence, whether denominated as a petition filed pursuant to Ind. Code § 35-38-7-5 or not, is considered a Petition for Post-Conviction Relief.
- (e) A petition seeking to present new evidence challenging the person's guilt or the appropriateness of the person's sentence, when brought by a person who has been sentenced to death and who has completed state post-conviction review proceedings, whether denominated as a petition filed pursuant to Ind. Code § 35-50-2-9(k) or not, is considered a Successive Petition for Post-Conviction Relief under Section 12 of this Rule.

Section 2. Filing. Any person who claims relief under Section 1(a)(1), (2), (3), (4), or (6) of this Rule or who otherwise challenges the validity of a conviction or sentence must file a verified petition with the clerk of the court in which the conviction took place. A person who claims relief solely under Section 1(a)(5) of this Rule and does not challenge the validity of the conviction or sentence must file a verified petition with the clerk of the court in the county in which the person is incarcerated. A proceeding under this Rule is commenced by filing three (3) copies of a verified petition with the clerk of the court in which the conviction took place. No deposit or filing fee shall be required.

The petitioner must file three (3) copies of the petition. No deposit of filing fee shall be required. The Clerk shall file the petition upon its receipt and deliver a copy to the prosecuting attorney of that judicial circuit. In capital cases, the clerk shall, in addition to delivering a copy of the petition to the prosecuting attorney, immediately deliver a copy of the petition to the Attorney General. If an affidavit of indigency is attached to the petition, the clerk shall call this to the attention of the court. If the court finds that the petitioner is indigent, it shall allow petitioner to proceed in forma pauperis. If the court finds the indigent petitioner is incarcerated in the Indiana Department of Correction, and has requested representation, it shall order a copy of the petition sent to the Public Defender's office.

...

Rule PC 2. Belated Notice of Appeal--Belated Motion to Correct Error--Belated Appeal

...

Section 1. Belated Notice of Appeal

- (a) *Required Showings.* An eligible defendant convicted after a trial or plea of guilty may petition the trial court for permission to file a belated notice of appeal of the conviction or sentence if;
- (1) the defendant failed to file a timely notice of appeal;
 - (2) the failure to file a timely notice of appeal was not due to the fault of the defendant; and
 - (3) the defendant has been diligent in requesting permission to file a belated notice of appeal under this rule.
- (b) *Form of petition.* There is no prescribed form of petition for permission to file a belated notice of appeal. The petitioner's proposed notice of appeal may be filed as an Exhibit to the petition.
- (c) *Factors in granting or denying permission.* If the trial court finds that the requirements of Section 1(a) are met, it shall permit the defendant to file the belated notice of appeal. Otherwise, it shall deny permission.
- (d) *Hearing.* If a hearing is held on a petition for permission to file a belated notice of appeal, it shall be conducted according to Ind. Post-Conviction Rule 1(5).
- (e) *Appealability.* An order granting or denying permission to file a belated notice of appeal is a Final Judgment for purposes of Ind. Appellate Rule 5.
- (f) *Time and procedure for initiating appeal.*
- ~~(1) If the petition includes a proposed notice of appeal as an Exhibit, an order granting the petition shall also constitute the filing of that notice of appeal in compliance with the time requirements of App. R. 9(A).~~

(2) If the court grants permission-petition to file a belated ~~does not include a proposed~~
notice of appeal, ~~as an Exhibit,~~ the time and procedure for filing a such notice of appeal
is governed by App. R. 9(A).

...

**FORM FOR SUCCESSIVE POST-CONVICTION
RELIEF RULE 1 PETITIONS**
(To Be Filed With Petition For Post-Conviction Relief)

IN THE _____ COURT OF _____ COUNTY
STATE OF INDIANA

)		
Full Name of Movant <u>Petitioner</u>)		
)		
)	Cause No. _____	
Prison Number (if any))	(To be supplied by the Clerk of the Court)	
)		
v.)		
)		
State of Indiana,)		
)		
Respondent)		

INSTRUCTIONS - READ CAREFULLY

If you have previously filed a Petition for Post-Conviction Relief directed to this conviction or these convictions and the earlier petition was decided on the merits, you must fill out this form and file it along with your Petition. It must be legibly handwritten or typewritten, signed by the petitioner before a person authorized to take oaths and properly notarized. Since this must be signed under oath, any false statement of a material fact herein may serve as the basis of prosecution and conviction for perjury. Exercise care to be sure all answers are true and correct.

...